

McGinn - People - Direct

1                   THE COURT: The Court is in recess until  
2                   2:15.

3                   L U N C H E O N    R E C E S S  
4                   (Afternoon session.)

5                   THE COURT OFFICER: Ready for the jury?

6                   THE COURT: Yes.

7                   THE COURT OFFICER: Jury entering.

8                   THE COURT: Continued case on trial,  
9                   indictment 167N-2005, People versus Mark Orlando.

10                  People ready?

11                  MR. HAYDEN: Ready, Your Honor.

12                  THE CLERK: Defense ready?

13                  MR. LEMKE: Yes, Your Honor.. Ready.

14                  THE CLERK: Let the record reflect the  
15                  presence of Mr. Orlando, the sworn jurors and  
16                  alternates.

17                  Detective, be reminded you are still under oath.

18                  THE COURT: Good afternoon, ladies and  
19                  gentlemen.

20                  THE COURT: Mr. Hayden, you may continue.

21                  MR. HAYDEN: Yes, Your Honor.

22                  Q. Did the defendant tell you he didn't know where  
23                  Bobby Calabrese was killed?

24                  A. Yes.

25                  Q. Did he tell you he didn't know how Bobby Calabrese

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1 was killed?

2 A. Yes.

3 Q. Did he tell you he didn't know why Bobby Calabrese  
4 was killed?

5 A. Yes.

6 Q. Did he tell you that Bobby Calabrese was alive and  
7 well when he last saw him?

8 A. Yes.

9 Q. Did he tell you that he himself was with Herva  
10 Jeannot on his way to Wantagh Suzuki when they last saw Bobby  
11 Calabrese alive and well?

12 A. Yes, they were pulling off of Industrial Place onto  
13 Austin Boulevard.

14 Q. Did Detective McHugh begin to reduce what the  
15 defendant was saying to writing?

16 A. Yes, he did.

17 Q. Describe how Detective McHugh did that?

18 A. Detective McHugh said now that he told us the story  
19 would he like to put it down in writing, to which the  
20 defendant replied yes. He told him he was going to ask him  
21 questions. When he answered them he would put them in  
22 narrative form and write them out for him.

23 Q. What was the approximate time Detective McHugh  
24 finished reducing what the defendant was saying to writing?

25 A. It was about two o'clock in the morning.

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1 Q. What did Detective McHugh do with that written  
2 statement?

3 A. He read the statement out loud to the defendant.  
4 He then handed the statement to the defendant and asked the  
5 defendant to read it. If there were any corrections that  
6 needed to be made to let Detective McHugh know and he will  
7 make the corrections, and to initial the corrections. When  
8 he was done reading it, if he agreed with the contents of  
9 each page, sign the bottom of each page, and on the last  
10 page, sign his name and his address.

11 Q. Did you sign each page of the statement?

12 A. I did, yes.

13 Q. Detective McHugh as well?

14 A. Yes.

15 MR. HAYDEN: May I please have 45 shown to the  
16 witness.

17 THE COURT: Yes.

18 THE COURT OFFICER: The witness has People's  
19 45 for ID.

20 Q. Is that the defendant's statement?

21 A. Yes, it is.

22 Q. Is your signature on each page of that statement?

23 A. Yes.

24 MR. HAYDEN: May I please have that back.

25 Thank you.

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1 Q. Was the defendant offered anything to eat or  
2 drink?

3 A. Yes, he was.

4 Q. When was that?

5 A. At two o'clock in the morning he was offered an egg  
6 sandwich from the diner. We were going to get egg  
7 sandwiches. He refused anything to eat. At that point, I  
8 believe sometime in the morning, he was offered something to  
9 eat or drink, I believe that was around 6:50 in the morning.  
10 He refused at that point. At 10:30 in the morning he was  
11 offered something again. I believe he had a glass of water.  
12 Around eleven o'clock he had a donut.

13 Q. Did the defendant use the men's room whenever he  
14 asked?

15 A. Yes, he did.

16 Q. Describe the defendant's demeanor while you and  
17 Detective McHugh was speaking to them then.

18 A. Relax, composed. He seemed, you know, okay. He  
19 was talking us.

20 Q. How was he when he was talking about his gambling?

21 A. Very enthusiastic when he talking about the  
22 gambling.

23 Q. Did he seemed very excited when talking about the  
24 gambling?

25 A. Writing out the numbers, pointing here, saying this

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1       is, you bet this, half here, you bet this quarter here. He  
2       was overly enthusiastic about gambling.

3       Q.     Did he remain composed throughout the conversation?

4       A.     Yes, he did.

5       Q.     Did you resume speaking with the defendant?

6       A.     Yes, I did.

7       Q.     What was the approximate times you resumed speaking  
8       with him?

9       A.     That was about ten minutes after five in the  
10      morning.

11      Q.     Where was the defendant when you resumed speaking  
12      with him?

13      A.     He was still in the main interview room in the  
14      homicide squad.

15      Q.     Was he left alone from the time he signed his  
16      written statement until the time you resumed speaking with  
17      him?

18      A.     Yes, he was.

19      Q.     Was he handcuffed when you resumed speaking with  
20      him?

21      A.     No, he was not.

22      Q.     Was he handcuffed at any time inside the homicide  
23      squad?

24      A.     No, he was not.

25      Q.     Who was present when you resumed speaking with the

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1 defendant?

2 A. I was by myself.

3 Q. Describe the circumstances under which you resumed  
4 speaking with the defendant?

5 A. I knew Detective McHugh was in talking to Mr. Herva  
6 Jeannot. I believe that Herva Jeannot was relaying some of  
7 the events that really took place that night. I went back in  
8 and I told Mr. Orlando that Detective McHugh was over there  
9 talking to Herva Jamaica and he was probably giving us, you  
10 know, other facts that happened that night, the truth as to  
11 what happened that night. Now would be the time for Mark  
12 Orlando to tell us what was going on.

13 Q. Tell the jury what happened when you resumed  
14 speaking with the defendant?

15 A. The defendant just kept saying to me, detective,  
16 you don't understand. You don't understand. I would ask him  
17 what don't I understand. Explain to me what I don't  
18 understand. His only response was, detective, you don't  
19 understand. You don't understand. Talk to me. Tell me what  
20 is going on because the only version of events we're going to  
21 have is Herva Jeannot's. If I don't understand something,  
22 talk to me and make me understand. His only response to me  
23 was, detective, you don't understand. This went on for about  
24 twenty-five minutes back and forth. After twenty-five  
25 minutes. I didn't think I was going to get anywhere so I

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1 left the room again.

2 Q. Describe the defendant's demeanor when he kept  
3 telling you you don't understand?

4 A. His demeanor was basically the same as it was all  
5 night, relaxed and composed. You know, he wasn't upset, he  
6 wasn't forceful, he was just relaxed and composed, just  
7 saying, detective, you don't understand.

8 Q. What happened next?

9 A. I went back into the room. I believe at about six  
10 o'clock I went back into the room. Again, I explained to  
11 Mr. Orlando that Herva Jeannot was, in fact, giving up the,  
12 what we felt were truer versions of the events of Bobby  
13 Calabrese's murder. That we had a videotape of the spot the  
14 meeting took place. That the meeting did not take place  
15 where the defendant originally told us it had taken place. I  
16 told him that Herva Jeannot had given up where the gun was  
17 and that the defendant should at this point, if he wants his  
18 version of the story told to tell us the truth at this point.  
19 Again, the defendant just kept telling me, you don't  
20 understand. You don't understand.

21 Again, I just kept explaining to him, make me  
22 understand. Tell me what I don't understand. Explain it to  
23 me. This again went back and forth for awhile. At one point  
24 the defendant said to me that he was afraid. And I asked him  
25 what he was afraid of. He wouldn't tell me what he was

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1 afraid of. Again, he went, into you don't understand.

2 Explain to me what I don't understand. Again --

3 Q. Let me stop you for a moment.

4 Did his demeanor change at all when he was telling you he  
5 was afraid?

6 A. No.

7 Q. Did he appear upset then?

8 A. No, he did not.

9 Q. Disturbed in any way?

10 A. No, he didn't.

11 Q. Same as he had been?

12 A. Yes.

13 Q. Composed?

14 A. Yes.

15 Q. Not as enthusiastic when talking about the gambling  
16 but composed when he was talking about the rest?

17 A. Yes.

18 Q. Tell the jury what happened next?

19 A. I asked him what he was afraid of. Again he  
20 wouldn't tell me what he was afraid of. I brought up the  
21 point that if he was afraid because of the bookmaking aspects  
22 of it, that there might be organized crime involved, if that  
23 is what he was afraid of, we can protect him. He said he  
24 wasn't afraid so much for himself as he was afraid for his  
25 family.

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1 Again, I explained to him that if he was afraid, whatever  
2 reason he was afraid for, we could help protect him and his  
3 family if he wanted to give us the version of events that  
4 happened that night. Again he reverted back into, detective,  
5 you don't understand. You don't understand.

6 At one point during that conversation he told me, I don't  
7 even sleep in the same room with my wife any more at home. I  
8 don't sleep in the bedroom. I sleep over at the other end of  
9 the house with a shotgun. I asked him why he was doing  
10 that. And again he went back into, you don't understand, you  
11 don't understand. Kept going back and forth. Make me  
12 understand. Explain to me what I don't understand. If  
13 you're afraid, if you're afraid for yourself or for your  
14 family, we can do something to protect you.

15 Again, this went on for close to fifty minutes, and the  
16 most I got out of him was you don't understand.

17 Q. Did his demeanor ever change?

18 A. No.

19 Q. Composed throughout?

20 A. Yes, he was.

21 Q. What happened then?

22 A. I left the room at about 6:50. I went back into  
23 the room at about ten minutes to eight. About 7:50 in the  
24 morning. And I told him at this point that [REDACTED]  
25 was [REDACTED] [REDACTED]

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THE COURT: Ladies and gentlemen, you have been permitted to hear testimony about remarks made to the defendant by Detective McGinn about statements allegedly made by Herva Jeannot. You're to consider this testimony only when considering the circumstances under which the defendant himself may have made statements and for no other purposes. You are to completely disregard any statement allegedly made by Herva Jeannot when considering evidence against the defendant.

Any statement allegedly made by Herva Jeannot is not evidence against the defendant and may never be considered as evidence against the defendant. You are not to concern yourself with whether Herva Jeannot did or did not make any statements to the police, if he did, what those statement may have been or whether or not they were true.

I direct you in this regard and I will direct you again in my closing instructions to you.

Continue, Mr. Hayden.

Q. What happened then?

A. After a few minutes of that, Mark Orlando said to

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1 me, okay, I will tell you the truth. He then began to tell  
2 me another version of events that happened night.

3 Q. Did you take notes of that further conversation?

4 A. Yes, I did.

5 Q. How many pages of notes?

6 A. Four pages of notes.

7 MR. HAYDEN: May I please have these four  
8 pages which have been marked as 67A, B, C and D for  
9 identification shown to the witness.

10 THE COURT: Yes.

11 MR. HAYDEN: Thank you.

12 THE COURT OFFICER: The witness has 67A  
13 through D for ID.

14 Q. Do you recognize those four pages?

15 A. Yes, I do.

16 Q. What are they?

17 A. They're my four pages of the final interview that I  
18 did with Mark Orlando.

19 Q. Would those notes help refresh your recollection  
20 about the sequence of the things the defendant said then?

21 A. Yes.

22 MR. HAYDEN: With the Court's permission, may  
23 Detective McGinn keep those pages there up with him to  
24 refresh his recollection, if he needs to refresh his  
25 recollection, when recalling the sequence of the things

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1                   the defendant said then.

2                   MR. LEMKE: Again, no objection, Your Honor.

3                   THE COURT: Yes.

4                   Q. Please describe for the jury what the defendant  
5 told you then?

6                   A. The defendant started off by telling me that Herva  
7 Jeannot also had a betting line with Bobby Calabrese. That  
8 the defendant Mark Orlando had set up this account for Herva  
9 Jeannot. He gave me his password and he gave me his account  
10 number. He also said that he started off with a \$500 betting  
11 line, I believe, for \$100 a game he was able to bet, and he  
12 had lost some money and he arranged to have the betting line  
13 raised to a thousand dollars where he could bet \$250 a game.  
14 Again he told me that the last phone call that Mark Orlando  
15 made to the 888 number was on Tuesday, 11/30 where he had  
16 lost that money. He said on Wednesday, 12/1, Herva Jeannot  
17 knew that Mark Orlando had to pay Bobby \$17,000. And he  
18 thought it was going to be done on 12/2.

19                  Again, he said they were talking on Thursday, he was  
20 talking to Tom Flores and Barbara about going to the gym on  
21 Friday and Mark -- excuse me -- that Herva said he was going  
22 to go to the gym with them. Sometime during the day, or on  
23 Friday, Herva Jeannot brought a brown bag to work. During  
24 the day, he asked Mark Orlando if he could put the bag in  
25 Mark Orlando's car. Mark Orlando said he could. While Mark

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1 Orlando and Tom Flores were standing outside on the steps of  
2 Professional Credit Services, Herva Jeannot went over to the  
3 car. I asked him at this point if he was afraid about the  
4 money.

5 Q. Let me stop you for a moment?

6 A. Sure.

7 Q. Did he tell you that he and Tom Flores were  
8 watching Herva Jeannot place something in the trunk of his  
9 car?

10 A. Yes.

11 Q. Please proceed?

12 A. At this point, I asked him where the money was,  
13 wasn't he afraid that, you know, the money was sitting in the  
14 car unprotected. He said no, they were standing there  
15 watching. The money was in the glove compartment. Herva was  
16 going to go into the trunk. He said he watched him and Tom  
17 watched as Herva Jeannot hit the button. The trunk popped  
18 open and he placed the bag into the trunk. He then kind of  
19 jumped off.

20 I said, what happened, where did you meet Bobby Calabrese  
21 that night and he went into about he was down by STS Tires,  
22 made a right turn, went passed Peter's Clam Bar, made a  
23 U-turn and stopped by a light by Ruby Tuesdays. Kind of  
24 getting off track here. Herva told us what happened to the  
25 bullets in the gun. What happened to the bullets and to the

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1 gun. He said that the bullets were thrown off of the second  
2 bridge on the Loop Parkway. He said the gun was thrown off  
3 of a bridge on the Wantagh Parkway that was under  
4 construction. He wasn't sure if it was the first or the  
5 second bridge of the Wantagh Parkway, but it was the bridge  
6 under construction.

7 At this point he tells me that Herva had claimed to have  
8 three guns and that he used another one in a murder, and he  
9 told me that that's what he was afraid of for him and his  
10 family. We started talking about the gambling again and we  
11 got into, I asked him what he did with some of the winnings  
12 or the \$10,000 that he was up with the gambling. He said he  
13 had put \$6,000 into his checking account, and he had paid  
14 certain credit card bills. He paid \$4,000 to the MBNA credit  
15 card and \$1,500 to the CitiBank credit card, \$250 to a  
16 Capitol One credit card and then he put \$4,000 into the joint  
17 account that he had with his wife.

18 We then tried to get back on track, and I asked him what  
19 he was wearing the night that he went down to meet Bobby  
20 Calabrese. He said he was wearing white sneakers, a white  
21 T-shirt, black sweat pants. I believe they had H on the hip,  
22 and the black suede jacket he was wearing the night he was  
23 arrested. He said that they met by vacant restaurant down  
24 there. He said when he was first went down to Industrial  
25 there was a male black in a gray two door Grand AM on a

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1 silver phone sitting down there. He didn't think it was a  
2 good place to meet because the guy was down there. So, he  
3 went across the street.

4 And at 8:25 he called Bobby Calabrese across from  
5 7-Eleven, the 7-Eleven on Austin Boulevard. The street he  
6 was on is by a closed club. Didn't recall the name of the  
7 street at this point. Said he drove down the block twice.  
8 The second time down the block, he made a U-turn and he  
9 parked on the side of the street. He was there for about  
10 five minutes before Bobby Calabrese pulled up. But he was  
11 only there a minute or so when Herva Jeannot said he had to  
12 get out of the car and go to the bathroom.

13 Herva Jeannot got out of the car. A couple of minutes  
14 after that, Bobby Calabrese pulls up in his car and he pulls  
15 up in front of where Mark Orlando was parked by about twenty  
16 feet. When Bobby pulls up, Mark gets out of his car. Bobby  
17 gets out of his car. The two of them meet between the cars.  
18 Mark Orlando gives Bobby Calabrese a hug and he hands him  
19 \$17,000 from his breast pocket. He says the next thing he  
20 knows he hears a shot ring out right next to his right ear.  
21 As that's happening Bobby Calabrese is now falling down to  
22 the round. He then says Herva Jeannot runs passed him and  
23 runs up to Bobby Calabrese's car which was running, had the  
24 lights on, and the door was open. Herva Jeannot runs up and  
25 he closes the driver's door. Bobby is now lying in the

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1 middle of the street between the two cars. Herva Jeannot  
2 then comes back and shoots Bobby Calabrese two more times  
3 while he is standing over him. Both of them then go back  
4 into Mark Orlando's car, the Suzuki Verona, after Herva says  
5 let's go. As Mark Orlando is leaving where Bobby Calabrese  
6 is laying on the ground he notices that Bobby's feet are  
7 still moving. When they get into the car Mark Orlando now  
8 pulls up, and pulls up next to Bobby Calabrese. Herva  
9 Jeannot then gets out of the car and stands over Bobby and  
10 attempts to shoot him again. The gun at that point, I am  
11 told, does not fire. Herva Jeannot then reaches down and he  
12 picks up the \$17,000 and gets back in the car.

13 That is when the defendant pulls through the tire place,  
14 he goes down towards Peter's Clam Bar, makes a U-turn and  
15 comes back and he stops at the light in front of 7-Eleven.  
16 He sees people over by Bobby. He is yelling at Herva, they  
17 should call the cops for help. He says he is screaming and  
18 cursing at this point. Herva tell Marks they're not calling  
19 the cops and let's go home. As they're driving down Austin  
20 Boulevard, he sees a police car coming in the opposite  
21 direction with its lights on. Herva tells him not to speed.  
22 Mark Orlando says at this point he stops at every red light  
23 because he knows there are cameras in the lights and they  
24 take pictures. At this point he wants everybody to see or as  
25 many people to see he is with Herva Jeannot. He also said

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1       that was the reason that he stopped at the light by 7-Eleven  
2       because he know that 7-Eleven has cameras. They drive to  
3       Lido Boulevard to the Loop Parkway.

4           As they're going over the second bridge on the Loop  
5       Parkway, Herva tells him to slow down. He slows down. Herva  
6       then throws the bullets out of the window of the car. They  
7       continue driving. He says he calls Wantagh Suzuki. He calls  
8       Vivian. I believe he called Tom Flores and somebody else but  
9       I don't recall who he called. He says because he wants to be  
10      seen with Herva Jeannot at this point.

11          As they're driving on the Wantagh Parkway they get to the  
12       bridge that is under construction. Herva tells Mark to  
13       stop. Mark stops in the middle of the bridge. Herva Jeannot  
14       gets out of the car and throws the gun over the bridge into  
15       the water. Again he is calling as many people as possible so  
16       people will see him. That is the reason he stops at Wantagh  
17       Suzuki, but there's nobody there. Everybody is gone. He  
18       then goes over to CitiBank. He withdraws \$300 from the  
19       CitiBank ATM. He says when he pulls into the ATM again he  
20       knows there's a camera there. He wants to be seen with Herva  
21       Jeannot. He knows he would be blocking Herva because of the  
22       angle of the camera so he gets out of the car and goes to the  
23       trunk to get his wallet. He then comes back and withdraws  
24       \$300 from the ATM.

25          As they're driving over to Vivian's house they're on the

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1       135. Herva tells Mark to pull into a school at Exit 9.  
2       Herva Jeannot dumps his clothes in the dumpster at the  
3       school. They then go to Vivian's. They spend about forty  
4       minutes, thirty to forty minutes at Vivian's, Herva stays out  
5       in the car, Mark is in there talking to Vivian, looking at  
6       what needs to be done with the pool and the work that needs  
7       to be done with the pool.

8           They then leave there and he drives -- he tells me first  
9       he drives Herva home. When he drops Herva in front of the  
10      house, Herva tells him to keep his mouth shut or he will kill  
11      his wife Diana. Then he says that before he drove home,  
12      drove Herva home, he went by his house with Herva so his  
13      mother-in-law would see him with Herva. He said he stopped  
14      at the house and he gave Herva four foreign videotapes. He  
15      then drove him home.

16           I asked him did anything happened while sitting down on  
17      the street, if anybody came by, he said, well, while I was  
18      sitting on the street where Bobby Calabrese was killed a  
19      black Expedition had gone by, a guy on a bicycle had gone  
20      by. I asked him, after Bobby was shot, how much of the money  
21      did he get back. He said that wasn't my money anymore. I  
22      paid Bobby. I didn't get any of that money.

23           Q. I am going to take you back to the time the  
24      defendant was talking about when the shooting took place.

25           You said that the defendant said that all of a sudden

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1 there was a gunshot from behind his right ear?

2 A. That's correct.

3 Q. Whose right ear?

4 A. Mark Orlando's right ear.

5 Q. Mark Orlando was saying that the shot was right by  
6 his own right ear?

7 A. Yes.

8 Q. He didn't see anything then?

9 A. No, I did not.

10 Q. Looking at Bobby?

11 A. Correct.

12 Q. Bobby's facing him?

13 A. Correct.

14 Q. Shot by his right ear?

15 A. Yes.

16 Q. Have you reviewed your notes many times before  
17 testifying today?

18 A. Yes, I have.

19 Q. I am directing your attention to around nine  
20 o'clock that Friday night. I am sorry, that Friday morning.

21 Did you speak with the defendant then about giving a  
22 videotape statement?

23 A. Yes, I did.

24 Q. Describe the conversation about giving a videotaped  
25 statement?

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1           A. I asked the defendant if he wanted to go over to  
2         the District Attorney's Office and to give his statement on  
3         videotape in front of the district attorney, to which he  
4         replied he did not want to. I told him we have a form that  
5         we fill out when somebody refuses to do a video interview and  
6         if he would, to please sign it if he is refusing, to which he  
7         did.

8           MR. HAYDEN: May I please have 46 for  
9         identification shown to the witness, Your Honor.

10          THE COURT OFFICER: The witness has 46 for  
11         ID.

12          Q. Do you recognize that?

13          A. Yes.

14          Q. What is that?

15          A. It's the refusal of videotape interview filled out  
16         by me, signed as a witness by myself, and signed by Mark  
17         Orlando.

18          Q. How do you know it is?

19          A. It's got my signature on it with my shield number,  
20         got the date of 12/10/04, the time of nine a.m., and it says  
21         Refusal of Videotape Interview.

22          MR. HAYDEN: We offer that as 46 in evidence.

23          MR. LEMKE: No objection, Your Honor.

24          THE COURT: Mark it into evidence.

25          THE COURT OFFICER: 46 marked in evidence.

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1                   Do you want it shown back to the witness?

2                   MR. HAYDEN: Yes. Thank you.

3                   THE WITNESS: Thank you.

4                   Q. Please read that to the jury.

5                   A. Refusal of Videotape Interview. I have been told  
6 by Detective McGinn and understand I can go to the Nassau  
7 County District Attorney's Office and discuss the death of  
8 Robert Calabrese with an Assistant District Attorney. I have  
9 also been told and understand my discussion with the  
10 Assistant District Attorney will be videotaped to accurately  
11 record by sight and sound the entire conversation. After  
12 considering this opportunity I have decided not to speak to  
13 an Assistant District Attorney about this case.

14                  And again it has the date, the time, signature, and  
15 witness's signature.

16                  Q. Describe the defendant's physical condition while  
17 you were with him?

18                  A. His physical condition was fine. He appeared  
19 healthy. He was fine, alert.

20                  Q. Describe the defendant's demeanor throughout the  
21 time you were with him?

22                  A. His demeanor remained the same except when he  
23 talked about his gambling. When he talked about the gambling  
24 he was very enthusiastic, excited about the gambling. Other  
25 than that everything was more or less on an even keel.

McGinn - People - Direct

1 Q. His demeanor remained the same?

2 A. Yes.

3 Q. Remained calm and composed?

4 A. Yes.

5 THE COURT: Mr. Lemke.

6 CROSS EXAMINATION

7 BY MR. LEMKE:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. You took quite a bit of notes, correct?

11 A. Yes.

12 Q. My client remained calm throughout the night. Did  
13 you ever write that?

14 A. No, I did not.

15 Q. In fact, you spent a lot of time with him, didn't  
16 you, detective?

17 A. Yes.

18 Q. Anything you thought was significant you reduced  
19 and recorded, correct?

20 A. Anything he said, yes.

21 Q. And you made no notations anywhere about my  
22 client's demeanor throughout that night, correct?

23 A. That's correct.

24 Q. Also regarding when you first met Mr. Orlando, that  
25 was on December ninth, would that be correct?

McGinn - People - Cross

1 A. That's correct.

2 Q. And when you were speaking to him or before you  
3 were introduced, you knew -- you were with another detective  
4 speaking to my client at about ten o'clock that night?

5 A. Little after ten, yes.

6 Q. I think you also testified that there were rights  
7 known as Miranda rights read to my client; isn't that  
8 correct?

9 A. That is correct.

10 Q. And, there had been a lot of discussion regarding  
11 gambling with my client; is that correct?

12 A. Yes.

13 Q. And, in fact -- could I have People's, I think it's  
14 39 in evidence.

15 In speaking with my client, there were a number of  
16 conversations you had regarding his gambling and what he owed  
17 and how much he won; isn't that correct?

18 A. Yes.

19 Q. Now, I ask that you take a look at People's 56 in  
20 evidence.

21 THE COURT OFFICER: The witness has 56 in  
22 evidence.

23 Q. Now, do you recognize that at all, detective?

24 A. No, I don't.

25 Q. Has a date on the bottom of it, December 6, '04.

McGinn - People - Cross

1       Do you see that?

2       A. Yes.

3       Q. You spoke to my client on December ninth, is that  
4       correct, of '04?

5       A. That's correct.

6       Q. You had a discussion regarding gambling records; is  
7       that correct?

8       A. That's correct.

9       Q. And, is it your testimony these records were not  
10      before you, correct?

11      A. That is correct.

12      Q. You didn't ask my client about any specific days or  
13      weeks from anything that was before you, correct?

14      A. I don't understand what you're asking, Mr. Lemke.

15      Q. Well, your conversation with Mr. Orlando when he is  
16      asking how much he won on one week and the next week, that  
17      came from Mr. Orlando, correct?

18      A. That's correct.

19      Q. You didn't have this document consisting of  
20      thirty-five pages, which is in evidence, which is my client's  
21      gambling bets within those five, six weeks, correct?

22      A. This is the first time I am seeing these pieces of  
23      paper that you put in front of me, sir.

24      Q. Have you had any discussion regarding the bets that  
25      were won with these records?

McGinn - People - Cross

1 A. With these records?

2 Q. Right.

3 A. No. I never discussed these records or seen these  
4 records before you just handed them to me.

5 Q. When Mr. Orlando's talking to you about how much he  
6 is winning, certainly these records may corroborate what he  
7 won, correct?

8 MR. HAYDEN: Objection.

9 THE COURT: Sustained.

10 Q. You're saying you never saw those records?

11 A. That is, yes, that is what I said.

12 Q. You're not the carrying detective, correct?

13 A. That is correct.

14 Q. So, it wouldn't be your responsibility in reviewing  
15 any evidence to look at such gambling records, correct?

16 A. That would be correct, yes.

17 Q. So, now, when you're first speaking to my client,  
18 the Miranda warnings are read and he is cooperative. I  
19 believe he is answering the questions asked of him; isn't  
20 that correct?

21 A. He is answering the questions, yes.

22 Q. He is in a, I think, ten by ten interview room over  
23 at headquarters; isn't that correct?

24 A. Yes.

25 Q. And when you first go in, I don't think he's

McGinn - People - Cross

1       handcuffed at that time, is he?

2           A. No, he is not.

3           Q. And he is there, he is sitting at a, I believe, a  
4 desk that is in that room; isn't that correct?

5           A. Yes.

6           Q. And I think there is a number of chairs that you  
7 sit down at, Detective McHugh sat at as well?

8           A. Three chairs, yes.

9           Q. As you're talking to him, you're asking him about  
10 Bobby Calabrese, correct?

11          A. Yes.

12          Q. I think you previously testified first, I guess,  
13 two hours you're in the room with Detective McHugh, and  
14 you're taking some notations; correct?

15          A. Yes.

16          Q. And, during that conversation that lasted I think  
17 two hours that you were in there; isn't that correct?

18          A. It was actually a little longer than two hours,  
19 but, yes, we were in there.

20          Q. Okay. Initially I guess before the other detective  
21 began reducing the conversation to a written form, which is  
22 now in evidence, there's about two hours of conversation,  
23 correct?

24          A. Yes.

25          Q. And, then at about I would think maybe ten minutes

McGinn - People - Cross

1 after twelve, which would be December tenth, you're still in  
2 there with Detective McHugh, correct?

3 A. Yes.

4 Q. And, Detective McHugh begins to write down a  
5 statement?

6 A. Yes.

7 Q. Correct?

8 A. Yes.

9 Q. My client's telling you about his relationship with  
10 Herva Jeannot, correct?

11 A. Yes.

12 Q. And Bobby Calabrese, correct?

13 A. Yes.

14 Q. His family, everything that, in essence, gets  
15 reduced to this first statement, correct?

16 A. Yes.

17 Q. He denies having any involvement with the death of  
18 Mr. Calabrese, correct?

19 A. Yes.

20 Q. He denies having any knowledge, correct?

21 A. That's correct.

22 Q. He denies having any gun or knowing that Herva had  
23 a gun, correct?

24 A. At this point, he's denying anything to do with the  
25 murder of Bobby Calabrese, yes.

McGinn - People - Cross

1 Q. And that is reduced into written form, correct?

2 A. Correct.

3 Q. Then he signs that form, correct?

4 A. That's correct.

5 Q. That ends at about two o'clock, correct?

6 A. Yes.

7 Q. In the morning?

8 A. Yes.

9 Q. And then from two o'clock to 5:10 he is left alone,  
10 correct?

11 A. Yes.

12 Q. And, about, what, thirty to forty feet across the  
13 way Herva Jeannot is with the other detectives in another  
14 room; isn't that correct?

15 A. That's correct.

16 Q. Mr. Orlando's left alone for about three hours, and  
17 then you go back in about ten minutes after five, that's  
18 December 10, 2004, correct?

19 A. Yes.

20 Q. You go in, you're with again your pad to take  
21 notes; isn't that correct?

22 A. Yes.

23 Q. And now you begin to talk with Mr. Orlando telling  
24 him, listen, Mr. Jeannot is here, he's talking with some  
25 detectives, now is your time to tell us what really went

McGinn - People - Cross

1 down, correct?

2 A. Yes. Words to that effect, yes.

3 Q. This is at about 5:10, correct?

4 A. That's correct.

5 Q. And, he says, detective, you don't understand,  
6 correct?

7 A. Correct.

8 Q. And you say to him, well, Mark, I don't understand  
9 what you mean, you don't understand. Why don't you explain  
10 it to me. And he says, you don't understand. He doesn't  
11 say anything other than that. He says, detective, you don't  
12 understand, correct?

13 A. Correct.

14 Q. You try to figure out what he means so you're  
15 asking, you're prying, Mark, what do you mean, tell me.  
16 Maybe I can assist you. Tell me what you mean, and he says,  
17 detective, you don't understand. Correct?

18 A. That's correct.

19 Q. You tell Mark, are you afraid of the Mafia?

20 Are you afraid that there's a organized crime behind  
21 this, that you're afraid for your wife and perhaps your  
22 unborn child and family? We can perhaps protect you. Okay.  
23 Is that during that conversation?

24 A. No, sir.

25 Q. Well, you talk to him ten minutes after five to

McGinn - People - Cross

1 5:35, twenty-five minutes?

2 A. That's correct.

3 Q. The only thing of substance you can recall during  
4 those twenty-five minutes are you asking Mark, tell me what  
5 you mean, and all Mark is saying is, detective, you don't  
6 understand. Correct?

7 A. That's correct.

8 Q. Now, we just went back and forth like there for  
9 about four minutes, but this carried on for twenty-five  
10 minutes, correct?

11 A. Yes.

12 Q. Until, you said to yourself, I don't think I'm  
13 getting anywhere, he's not telling me what is concerning him,  
14 and you leave the room; isn't that correct?

15 A. That's correct.

16 Q. At about 5:40 Mark is taken to the bathroom,  
17 correct?

18 A. Yes.

19 Q. He is placed back into this interview room,  
20 correct?

21 A. Yes.

22 Q. And at six o'clock, you go back in there again?

23 A. Yes.

24 Q. And when you go back in, you begin to say him,  
25 Mark, you know, Herva's over there, why don't you tell us,

McGinn - People - Cross

1 tell us, what is happening. Tell us what you remember, what  
2 are you afraid of.

3 Isn't that correct?

4 A. Yes.

5 Q. He again tells you, detective, you don't  
6 understand, I can't tell you, you don't understand, Correct?

7 A. He said, you don't understand. Never said I can't  
8 tell you. He said you don't understand.

9 Q. You again begin to say, Mark, what is it, you start  
10 throwing out, is that when you start asking about organized  
11 crime?

12 A. Sometime during that conversation, yes.

13 Q. Are you afraid, I think you said, for your family?  
14 He said no, it's not organized crime I'm afraid of?

15 A. That is not what he said.

16 Q. He says you don't understand at this point, doesn't  
17 he?

18 A. That's correct.

19 Q. And, this conversation now goes on for another  
20 fifty minutes, doesn't it?

21 A. Yes.

22 Q. And you're telling him, you're sitting across from  
23 Mark, you are looking at Mark, you're telling Mark tell us  
24 what happened. Okay. I don't believe you. Tell us what  
25 happened and all he is doing is looking at you, detective,

McGinn - People - Cross

1 you don't understand; isn't that correct?

2 A. That's correct.

3 Q. That goes on for another fifty minutes. You're  
4 sitting there, you're trying to talk to him, you're trying to  
5 get him to tell you what is he afraid of. What, tell me,  
6 convince me, talk to me, make me understand what I don't  
7 understand. Try me. Correct?

8 A. That's correct.

9 Q. And then after that fifty minutes you walk out of  
10 that room, don't you?

11 A. Yes.

12 Q. He is still there, he hasn't told you what his fear  
13 is, he hasn't told you what you don't understand; isn't that  
14 correct?

15 A. I am sorry. I didn't get the first part of that.

16 Q. During that entire fifty minutes, he doesn't tell  
17 you what you don't understand, he doesn't tell you what he is  
18 afraid of, does he?

19 A. No, he does not.

20 Q. Then you leave the room, I guess, about 7:40 now,  
21 he then goes to the bathroom again; isn't that correct?

22 A. Yes.

23 Q. No one's going in and out of that room with him  
24 from 6:50 to 7:40 in the morning; isn't that correct?

25 A. That's correct.

McGinn - People - Cross

1 Q. You go back in at about 7:50; isn't that correct?

2 A. Yes.

3 Q. Now, you're in there for about an hour, from 7:50  
4 to 8:50, correct?

5 A. Yes.

6 Q. And I think initially didn't Detective Brosnan go  
7 in with you initially?

8 A. At 7:50, yes.

9 Q. Okay. But I don't believe he stayed the whole  
10 time?

11 A. No, he did not.

12 Q. Correct?

13 A. Correct.

14 Q. You tell him, listen, I think you testified on  
15 direct, that Herva Jeannot admitted that Herva shot him but  
16 you paid him; is that correct?

17 A. That's correct.

18 Q. My client looks at you and begins to tell you,  
19 okay, what happened, doesn't he?

20 A. Not immediately. After a few minutes, yes.

21 Q. Well, you're writing notes to that effect, correct?

22 A. Yes.

23 Q. And, part of the notes that you take is that on  
24 December third, page nine, my client, during the break, Herva  
25 Jeannot went to his car and put some type of gym bag in the

McGinn - People - Cross

1 trunk?

2 A. It wasn't a gym bag. It was a brown backpack.

3 Q. He also tells you, okay, that his fear was that  
4 Herva kept threatening to kill his wife and unborn child?

5 A. Not kept threatening. He told me that he did  
6 threaten to .

7 Q. Well, in fact, you recorded that down in your  
8 notes, correct?

9 A. Yes, I did.

10 Q. That Herva threatened Mark that he would kill, he  
11 would kill his wife and unborn child?

12 A. He said, he didn't say anything about the unborn  
13 child. He said if Mark doesn't keep his mouth shut he will  
14 kill his wife Diana.

15 Q. Were you present when my client was speaking to  
16 Detective Cereghino?

17 A. No, I wasn't.

18 Q. So, while you're now having this conversation from  
19 7:50 to 8:50, you're making notations and you begin also to  
20 talk about his finances again, don't you?

21 A. Yes.

22 Q. And in talking about the finances my clients never  
23 tells you that his house is in foreclosure or that there's  
24 bill collectors or debt collectors coming after him at all,  
25 correct?

McGinn - People - Cross

1 A. That's correct.

2 Q. In asking about his finances he says I own a house,  
3 I have about a \$375,000 mortgage on the house?

4 A. That is not during the 7:50 to 8:50 interview.  
5 That is the earlier one.

6 Q. During that early one he doesn't say he is in debt,  
7 he has money problems or anything else, does he?

8 A. No.

9 Q. In fact he tells you he has car payments of \$399 a  
10 month, correct?

11 A. Yes.

12 Q. You're asking him about other payments he has, he  
13 has MBNA, he owes on a credit card that he had paid, I think.  
14 he has A minimum, he paid \$400, a little extra?

15 A. I don't know what his minimums were. When I asked  
16 him about the debts he told me he had an outstanding debt  
17 with MBNA for \$14,000. He was paying \$400 a month. I don't  
18 know if that was meaning the minimum payment or what that  
19 was.

20 Q. When you're saying outstanding debt, these are all  
21 current, aren't they?

22 A. Yes.

23 Q. He didn't tell you he is behind, these are what he  
24 pays each month, correct?

25 A. That is what he was saying.

McGinn - People - Cross

650

1 Q. Didn't say they're behind, correct?

2 A. That's correct.

3 Q. And, he talks you about the MBNA charge card he has  
4 with CitiBank and the pool he had I think a construction loan  
5 on that was put in his house, correct?

6 A. Yes.

7 Q. He is also I think at some point when he is  
8 discussing earlier as well perhaps later regarding the  
9 gambling again, correct?

10 A. I am not sure what you're asking me when you're  
11 saying the discussion earlier and perhaps later. I am not  
12 following that. I am sorry.

13 Q. You have in your notes password, POP 1274,  
14 password, correct?

15 A. Correct.

16 Q. That my client gave you that, correct?

17 A. That's correct.

18 Q. Also talked to you about not only his gambling but  
19 that he was up significantly over the course of his dealings  
20 with Mr. Calabrese, correct?

21 A. That's correct.

22 Q. He goes on to now tell you about how he went down,  
23 he was going to meet Bobby, that he was at the gym that  
24 Friday, December third.

25 Tells you that, correct?

McGinn - People - Cross

1           A. Yes.

2           Q. He tells you that he drove on, I think, North  
3 Broadway, I think once or twice, doesn't he?

4           A. He never said the name of the street.

5           Q. But he says he went down and I think turned around?

6           A. Went down, made a U-turn, went down the block once,  
7 second time he came down the block, he made a u-turn.

8           Q. Now, now you didn't ask him, you didn't tell him,  
9 Mark, did you go around twice? He volunteered that to you,  
10 didn't he?

11          A. Yes.

12          Q. Didn't have a video before you where you knew that  
13 there was a car that turned around twice, so you could  
14 confront Mark with that information, correct?

15          A. When I was speaking to him did I have a video in  
16 front of me?

17          Q. Right.

18          A. No.

19          Q. You had no knowledge, independent knowledge until  
20 Mark told you that he pulled an U-turn and then parked on the  
21 side of the street, correct?

22          A. I am sorry. I lost the question.

23          Q. When Mark tells you about how he was in Island Park  
24 and he pulled a U-turn on the street, okay, you had no  
25 independent knowledge of that, correct?

McGinn - People - Cross

1 A. Yes, I did.

2 Q. You had seen the video?

3 A. A portion of the video, yes.

4 Q. Okay. So, you knew that their had been this U-turn  
5 with this car that the investigation believed was Mark's car,  
6 correct?

7 A. That's correct.

8 Q. Okay. When Mark tells you about that U-turn, right  
9 -- withdrawn.

10 Did you have to confront Mark?

11 Did you say to Mark while he's talking to you, between  
12 this time frame in the morning, did you tell Mark, Mark,  
13 listen, we have a video, and we saw this car pull in around  
14 and make a U-turn, or did Mark say to you, when I got there I  
15 pulled in and made a U-turn?

16 A. It's kind of almost a three part question.

17 Q. Okay.

18 A. At six o'clock in the morning when I was speaking  
19 to him, I told him that we had a video. Again, between 7:50  
20 and 8:50, I again told him we had a video. And that we knew  
21 where the gun was, and things like that. I did not  
22 specifically tell him that the car in the video makes a  
23 U-turn or goes down the block twice.

24 Q. Right. Now, you also didn't tell Mark that the car  
25 in the video, when it pulled away from the curb, made, it

McGinn - People - Cross

1       appeared to make a stop after Mr. Calabrese had arrived,  
2       correct?

3       Did I confuse you?

4       A.   Yes.

5       Q.   You seen the video?

6       A.   Yes.

7       Q.   In the video there is a portion within that video  
8       where Mr. Calabrese's car pulls up in front of this other  
9       car, correct?

10      A.   Correct.

11      Q.   And that at a certain particular time, this other  
12     car pulls away from the curb, correct?

13      If you remember the video?

14      A.   Yes.

15      Q.   And then it stops for a second, correct?

16      A.   Yes, correct.

17      Q.   Okay. Did you at that time tell Mark that the  
18     video that I saw ha the car pull away from the curb and stop,  
19     why don't you tell me what that is about, or did Mark  
20     voluntarily tell you, listen, this is what happened, I  
21     parked, you were there for a few minutes, I pulled away, I  
22     had to stop, Herva said stop and opened up the door.

23      Do you understand the question?

24      A.   It's a long question, but he never told us me that  
25     Herva said to stop. He told me that when he pulled, when he

McGinn - People - Cross

1      left where Bobby Calabrese was, he saw his legs were still  
2      moving. He said then they, himself and Herva, got back into  
3      his car and he pulled up and he stopped by Bobby's body. He  
4      didn't tell me that Herva told him to stop.

5            Q. There is a written statement that was given by my  
6      clients, a second one, with Detective Cereghino.

7            You're aware of that statement, correct?

8            A. I know there was a statement taken. I am not aware  
9      of the contents of that statement. I have never read that  
10     statement.

11          Q. You never read the statement?

12          A. No, I did not.

13          Q. And, as you sit here now, the conversation you had  
14     with Mark, did you reduce that to writing for my client to  
15     sign?

16          A. No, I did not.

17          Q. So, you're unaware what is discussed between my  
18     client and Detective Cereghino, but you never told Mark  
19     during your conversation between the hours of 7:50 and  
20     roughly 8:50 that this car appeared to have stopped, correct?

21          A. Again, that was like a three part question: . I am  
22     not sure which one, you know, in the order in which I should  
23     answer that.

24          If you want to give me the question again.

25          Q. In simplest form, did you tell Mark, what you saw

McGinn - People - Cross

1       in the video?

2           A. No, I did not.

3           Q. Okay. And your conversation you said the  
4 information you got from Mark, correct?

5           A. Again, I am sorry. I don't understand what you're  
6 asking.

7           Q. Well, the information you just testified here to  
8 this jury was based on what Mark told you during this  
9 conversation between 7:50 and 8:50, correct?

10          A. Yes.

11          Q. Okay. All right. And now, as you have this  
12 conversation, do you ask him a little bit further regarding  
13 the gun that was used by Mr. Jeannot?

14          A. As to what with the gun?

15          Q. Had he seen him with it before, where the gun came  
16 from. Did you have any conversation with Mark regarding that  
17 at all?

18          A. No, I did not.

19          Q. In fact, didn't Mark tell you that he didn't know  
20 that Herva Jeannot was going to rob him or kill him; isn't  
21 that correct?

22          A. Yes.

23          Q. In fact, he told you all he was doing was going  
24 down there to pay off his debt, because he was up so much in  
25 his winnings, he cut off the line and he was paying Bobby

McGinn - People - Cross

1           Calabrese, correct?

2           A.    He said he wanted to go down and pay Bobby  
3           Calabrese, yes.

4           Q.    In fact, didn't you ask him how he was coming down  
5           there to pay him?

6           A.    Yes.

7           Q.    And he told you that usually Bobby comes up to pay  
8           him, but Bobby was going out to dinner and that Mark was  
9           going to go down and wind up going to Wantagh Suzuki, he  
10          would stop down there to pay him?

11          A.    They would meet up later.

12          Q.    Mark unfortunately was a loser within the last week  
13          so he had to go down and pay him?

14          A.    Actually the last two weeks, but, yes.

15          Q.    The last two weeks he also discussed with you that  
16          the manner in which payment are owed, run from say, maybe  
17          Friday to say Tuesday, that may be paid that Friday, was that  
18          specifically discussed with you?

19          A.    I believe it was on Thursdays that the debt or  
20          winnings were paid. I believe the week ran up to Sunday and  
21          then that following Thursday the winnings or losses were  
22          either collected or paid.

23          Q.    He had discussed that with you, didn't he?

24          A.    Yes.

25          Q.    Mark, in fact, told you actually doesn't owe the

McGinn - People - Cross

1 full \$17,000. I owe only perhaps it was \$8,100 or something  
2 like that, and that the other money, \$9,100 would not be due  
3 until the following week?

4 A. The \$8,700 that he lost in week five, payments on  
5 that was due on 12/2, Thursday 12/2. The additional \$9,100  
6 he lost on the twenty-ninth and the thirtieth, would not, the  
7 payment on that would not be due until 12/9, Thursday, 12/9.

8 Q. Not once during your conversation did Mark tell you  
9 Bobby Calabrese or anybody else had ever threatened him, that  
10 he had to pay or else?

11 Mark never made any remarks like that at all, correct?

12 A. That's correct.

13 Q. It was only until you came in at 7:50 that you  
14 advised Mark what Jeannot, had said, that Mark then said,  
15 okay, I can tell you now what happened; isn't that correct?

16 A. No. I told him at six o'clock in the morning that  
17 Herva told us where the gun was. I told him at six o'clock  
18 in the morning that there was a videotape of where the actual  
19 meeting occurred. It wasn't until 7:50, when I told him that  
20 Herva had admitted that he did the shooting, but that Mark  
21 Orlando had paid Herva to do it.

22 Q. So, the first time that anything was said to Mark  
23 that Herva finally admitted that Herva shot and killed Bobby  
24 Calabrese was at eight o'clock?

25 A. Approximately, yes.

McGinn - People - Cross

1 Q. Okay. And it's at that time that Mark says,  
2 doesn't tell you, you don't understand, doesn't say, I don't  
3 want to talk to you, at that point he has a conversation with  
4 you for the next hour; isn't that correct?

5 A. That's correct.

6 Q. And then it's at that point thereafter, if you  
7 know, that Detective Cereghino came in and then took a  
8 written statement from Mark, if you know?

9 A. It was later, later that morning, yes.

10 Q. Thank you, detective.

11 A. You're welcome, sir.

12 REDIRECT EXAMINATION

13 BY MR. HAYDEN:

14 Q. I want to take you back to the cross examination of  
15 the initial conversation when you and Detective McHugh were  
16 speaking with the defendant.

17 The defendant never told you Herva Jeannot was involved  
18 in anything, did he?

19 A. Yes. He told me, he didn't tell us that Herva  
20 Jeannot was involved in anything.

21 Q. He told you he wasn't with -- he was with Herva  
22 Jeannot?

23 A. Yes.

24 Q. They were moving away from the Long Beach  
25 vicinity?

McGinn - People - Redirect

1 A. Yes.

2 Q. They were heading out to Wantagh Suzuki?

3 A. Yes.

4 Q. They left Bobby alive and well?

5 A. Yes.

6 Q. He was providing an alibi for Herva Jeannot?

7 MR. LEMKE: Your Honor, I would ask that the  
8 District Attorney not ask leading questions.

9 THE COURT: Overruled.

10 A. Yes.

11 Q. Defense counsel asked you a couple of questions  
12 about he never said why he was afraid, assuming of course he  
13 was afraid.

14 Did you ever see any manifestation of fear in him?

15 A. No, I did not.

16 Q. His demeanor never changed?

17 A. Demeanor never changed.

18 Q. He is talking about, I'm afraid, but he looks like  
19 he did the whole conversation?

20 A. Except when he was talking about his gambling, he  
21 was enthusiastic.

22 Q. He was composed?

23 A. Yes.

24 Q. Talking about how afraid he was, but he was  
25 composed?

McGinn - People - Redirect

1 A. Yes.

2 Q. Calm; is that right?

3 A. Yes.

4 Q. Defense counsel asked you about POP 1274 and  
5 implied that was Mark talking about Mark's gambling. What  
6 did POP 1274 refer to?

7 A. POP 1274 is the account number that was established  
8 by the defendant for Herva Jeannot with a password.

9 Q. Defense counsel asked you a lot of questions about  
10 what the defendant told you when Bobby was shot. He told you  
11 that all he knew initially was he heard a gunshot from behind  
12 his right ear; is that right?

13 A. Yes.

14 Q. Then he told you Bobby went down; is that right?

15 A. Yes.

16 Q. Then he told you he saw Herva Jeannot run over to  
17 Bobby's car; is that right?

18 A. Yes.

19 Q. Shut the driver's door of Bobby's car?

20 A. Yes.

21 Q. Come back to Bobby's body?

22 A. Yes.

23 Q. Leaned down and fired two more bullets into Bobby's  
24 head?

25 A. Yes.

## McGinn - People - Redirect

1 Q. While he himself was standing there watching?

2 A. Yes.

3 Q. Told you Herva said, let's go?

4 A. Yes.

5 Q. They went?

6 A. Yes.

7 Q. The two of them got into the Suzuki Verona?

8 A. Yes.

9 Q. The defendant was driving?

10 A. Yes.

11 Q. The defendant drove around Bobby's body?

12 A. Yes.

13 Q. The defendant noticed that Bobby's feet were still  
14 moving, a little sign of life in him?

15 A. Yes.

16 Q. The defendant stopped?

17 A. Yes.

18 Q. Herva didn't say anything?

19 A. Yes, that's correct. He did not say anything.

20 Q. Herva got out?

21 A. Yes.

22 Q. Herva went over to Bobby's body?

23 A. Yes.

24 Q. Herva tried to shoot again?

25 A. Yes.

McGinn - People - Redirect

1 Q. But the gun wouldn't go off?

2 A. That's correct.

3 Q. The defendant sat behind the steering wheel of the  
4 car?

5 A. Yes.

6 Q. Engine about running?

7 A. Yes.

8 Q. Waited for Herva?

9 A. Yes.

10 Q. Herva went back and got in along side the  
11 defendant?

12 A. Yes.

13 Q. The defendant drove away?

14 A. Yes.

15 Q. Is that what the defendant told you?

16 A. Yes.

17 Q. Defense counsel made a remark during cross  
18 examination about the defendant saying he was so far up in  
19 his winnings that he went there to pay Bobby.

20 Did he ever say he was so far up in his winnings that he  
21 wanted to pay Bobby?

22 A. Never said he was so far up, but said he was  
23 ahead. He was still winning.

24 Q. Defense counsel talked about why Bobby wound up in  
25 North Long Beach. Why they had the meeting in North Long

McGinn - People - Redirect

1 Beach. And, defense counsel said something about it's  
2 because the defendant was going to pay Bobby.

3 Do you remember that questioning?

4 A. Yes.

5 Q. Did the defendant say that he met Bobby in North  
6 Long Beach because the defendant was out and about and  
7 happened to be stopping at Wantagh Suzuki that night, so he  
8 decided to come and meet Bobby in North Long Beach?

9 A. He had made arrangements to meet with Bobby there  
10 in North Long Beach because he was going to go to Wantagh  
11 Suzuki that night.

12 MR. HAYDEN: Nothing further, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. LEMKE:

15 Q. Detective, it took you from five o'clock in the  
16 morning to six speaking with my client, and they then from  
17 six o'clock, I am sorry, from 5:10, 5:40?

18 A. 5:35, sir.

19 Q. 5:35, and then from six o'clock, you went back in,  
20 to 6:50, trying to get Mark Orlando to talk about the death  
21 of Bobby Calabrese; isn't that correct?

22 A. Yes.

23 Q. And you got nothing but you don't understand,  
24 correct?

25 A. Yes.

McGinn - People - Recross

1 Q. And then among other things then you go back in?

2 A. Right.

3 Q. Then you go back in at 7:50, correct?

4 A. Yes.

5 Q. You talked to him for an hour where now he just  
6 spills out everything; isn't that correct?

7 A. He tells me another version of the story, yes.

8 Q. He tells you how he is there, correct?

9 A. Yes.

10 Q. Tells you he said no idea that Herva was going to  
11 rob Mr. Calabrese, correct?

12 A. Correct.

13 Q. Tells you he said no idea Herva had a gun,  
14 correct?

15 A. That's correct.

16 Q. And yet here he is now admitting he is there, he is  
17 admitting he's in the car, and yet you immediately decide,  
18 let me write this down, since he is so cooperative and let  
19 him sign this statement like he just did hours earlier with  
20 the other detective; isn't that what you do?

21 A. No.

22 Q. No. In fact, you leave, and it's not until an hour  
23 and-a-half later that Detective Cereghino goes in at 10:30 to  
24 now take a written statement from my client; isn't that  
25 correct?

McGinn - People - Recross

1 A. Yes.

2 Q. The next day you leave at nine o'clock, without  
3 going back in to talk to Mark again, do you?

4 A. That's correct.

5 MR. LEMKE: I have nothing else.

6 THE COURT: Anything further, Mr. Hayden?

7 MR. HAYDEN: No, Your Honor.

8 THE COURT: Thank you, Detective. Have a good  
9 day.

10 THE WITNESS: You too.

11 (Witness excused.)

12 THE COURT: Mr. Hayden, call your next  
13 witness.

14 MR. HAYDEN: Detective James Cereghino.

15 JAMES CEREGHINO, detective, called as a witness on behalf of  
16 the People, after having been first duly sworn, and  
17 having stated his shield number as 561, and his command  
18 as the Homicide Squad, Nassau County Police Department,  
19 took the witness stand and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HAYDEN:

22 THE CLERK: State your name, spelling your  
23 last name, give your shield number and command.

24 THE WITNESS: My first name is James, last  
25 name Cereghino, C-E-R-E-G-H-I-N-O, shield number 561, I

COPY  
MC

Cerighino - People - Direct

1 am a detective assigned to the Homicide Squad of the  
2 Nassau County Police Department.

3 THE COURT: Good afternoon.

4 THE WITNESS: Good afternoon, Your Honor.

5 THE COURT: You may proceed.

6 MR. HAYDEN: Yes, Your Honor.

7 Q. Good afternoon, detective.

8 A. Good afternoon, Mr. Hayden.

9 Q. How long have you been a member of the Nassau  
10 County Police Department?

11 A. A little over twenty-eight years.

12 Q. How long a detective?

13 A. Eighteen.

14 Q. How long with homicide?

15 A. Little over seven years.

16 Q. Know a man named Mark Orlando?

17 A. Yes, sir.

18 Q. Briefly describe him?

19 A. He's a male while, thirty-four years, about 5'10",  
20 heavy build.

21 Q. See him in this courtroom today?

22 A. Yes.

23 MR. LEMKE: So stipulated.

24 THE COURT: Let the record reflect the witness  
25 has identified the defendant as Mark Orlando.

Cerighino - People - Direct

1           Q. I am directing your attention to the morning of  
2 Friday, December 10, 2004.

3           Were you involved that morning with investigating the  
4 death of a young man named Bobby Calabrese?

5           A. Yes, I was.

6           Q. Did you speak with the defendant that morning?

7           A. Yes, I did.

8           Q. What was the approximate time you began speaking  
9 with the defendant?

10          A. It was about ten a.m.

11          Q. Where did you speak with the defendant?

12          A. In the main interview room of the homicide squad at  
13 headquarters, 1490 Franklin Avenue, Mineola, New York.

14          Q. Describe that room?

15          A. It's ten foot by ten foot, desk, three chairs, a  
16 filing cabinet, and the only door into the place is the top  
17 half there is a window and the adjoining wall next to it,  
18 half window, and half plywood.

19          Q. Who was present when you spoke with the defendant?

20          A. It was just the defendant and myself.

21          Q. Was the defendant handcuffed then?

22          A. No, he was not.

23          Q. Describe the circumstances under which you spoke to  
24 the defendant?

25          A. I was asked by the investigating detective in the

Cerighino - People - Direct

1 case, Detective McHugh, to go in and take a statement from  
2 Mr. Orlando as to what the final version of his, of the  
3 events of December third when Mr. Calabrese was killed.

4 Q. Describe any initial conversation with the  
5 defendant?

6 A. I entered the room as I said. He was alone. I  
7 reintroduced myself to him because the prior night when he  
8 had been brought in I was the one who took him into the room,  
9 searched him and took the handcuffs off him. I told him I  
10 was going to take a statement from him as to what his last  
11 version was, but before doing so I was going to notify him,  
12 give him notification of his rights.

13 Q. Did you do that?

14 A. Yes, sir, I did.

15 Q. How?

16 A. By using departmental form 233 Notification of  
17 Rights.

18 Q. Were any markings eventually placed on the card?

19 A. Yes.

20 Q. Describe those markings?

21 A. After I read him his rights, I gave him an  
22 opportunity to read the card. I asked him if he understood  
23 and he said yes. At that time after the question do you  
24 understand I asked him to put yes and sign his name.

25 Initially he went to the bottom of the card and not in the

Cerighino - People - Direct

1 proper place. At that time I asked him, I wanted him to  
2 answer the question, do you understand. He did put yes, and  
3 then signed it. I then took the card back from him and asked  
4 him now are you willing to speak to me without an attorney  
5 being present. He said yes. I gave him the card back after  
6 that question, he put the word yes and signed his name.

7 MR. HAYDEN: May I please have 47 for  
8 identification shown to the witness, Your Honor.

9 THE COURT OFFICER: The witness has People's  
10 47 for ID.

11 Q. Do you recognize that?

12 A. Yes, sir, I do.

13 Q. What is it?

14 A. This is the rights card that I used on December 10,  
15 2004 to advise Mr. Orlando of his rights.

16 Q. How do you know that?

17 A. By his print, his signature, my signature, my  
18 shield number, and where I indicated the date and the time on  
19 the top.

20 MR. HAYDEN: People offer that statement in  
21 evidence, Your Honor.

22 MR. LEMKE: No objection, Your Honor.

23 THE COURT: Mark it into evidence.

24 THE COURT OFFICER: People's exhibit 47 marked  
25 in evidence.

Cerighino - People - Direct

1                   Do you want it shown back to the witness?

2                   MR. HAYDEN: Yes, please.

3                   Q. Using that card in evidence, please read the  
4                   constitutional rights for the jury the same way you read them  
5                   for the defendant, and please include any response he may  
6                   have made?

7                   A. As I stated, I told him I was going to advise him  
8                   of his rights. I asked him to pay attention to me. When I  
9                   made sure he was looking at me I stated, before asking you  
10                  any questions, you should understand you have the right to  
11                  remain silent, and that any statement you make may be used  
12                  against you in court.

13                  Also you have the right to talk to a lawyer before  
14                  answering any questions or to have a lawyer present at any  
15                  time. If you cannot afford to hire a lawyer, one will be  
16                  furnished you, if you wish, and you have the rights to keep  
17                  silent until you had a chance to talk with a lawyer.

18                  At that time I asked him do you understand. He said  
19                  yes. I gave him the card. I asked him to read it. Then  
20                  asked him to put yes after do you understand. He started to  
21                  put it on the bottom of the card. He put the first two  
22                  letters Y-E and I asked him to, after the do you understand,  
23                  at that time I corrected him and asked him to put it after  
24                  the question, do you understand.

25                  At that time he printed the word yes, and signed his

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1 name.

2 I then took the card back and said, now that I have  
3 advised you of your rights, are you willing to answer  
4 questions. He indicated yes. I gave him the card back, he  
5 printed the word yes and signed his name again.

6 Q. Did you speak with the defendant after informing  
7 him of his constitutional right?

8 A. Yes, I did.

9 Q. Did you reduce what he was telling you to writing?

10 A. Yes, I did.

11 Q. Did you do that immediately?

12 A. Yes, sir. I basically just asked him some pedigree  
13 questions, put it on top of the statement, I then  
14 incorporated his rights into it, then I started with the  
15 statement.

16 Q. Describe how you reduced what he was saying then to  
17 writing?

18 A. I started off with how he started gambling with the  
19 deceased. I would ask him a question, he would answer it.  
20 At this time I would tell him I was going to put it down on  
21 paper. If he agreed, if he agreed with it, I would put it on  
22 the paper. I'd write it down.

23 Q. Is that what you did?

24 A. Yes, sir.

25 Q. Were corrections made to the statement that the

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1 defendant gave you?

2 A. Yes, sir.

3 Q. How did that happen?

4 A. The defendant requested that numerous corrections  
5 be made. Some were made during the taking of the statement,  
6 and some were made upon the completion of the statement when  
7 he had a chance to review it.

8 Q. Those statements are reflected on -- those  
9 corrections are reflected on the statement?

10 A. Yes, sir.

11 Q. What did you do when you finished reducing what the  
12 defendant was telling you to writing?

13 A. I read it to him, I gave him an opportunity to read  
14 it, he agreed with the contents, he wanted something added to  
15 it, I added what he wanted, and once he was satisfied with  
16 the statement I asked him to sign the bottom of each page,  
17 which he did.

18 Q. What was the approximate time he signed each page  
19 of the statement?

20 A. It was right around noon.

21 Q. Did you sign each page of the statement as well?

22 A. Yes, I did.

23 MR. HAYDEN: May I please have 48 for  
24 identification shown to the witness, Your Honor.

25 THE COURT: Yes.

## Cerighino - People - Direct

THE COURT OFFICER: The witness has 48 for identification.

3 Q. Do you recognize that?

4 A. Yes, sir.

5 Q. What is it?

6       A. This is the statement that Mr. Orlando gave me on  
7 December tenth, that I reduced to writing, and which he  
8 corrected and ultimately signed.

Q. Do you recognize the contents?

10 A. Yes, I do.

11 Q. And the signatures?

12 A. Yes, sir.

13 MR. HAYDEN: The People offer that, Your  
14 Honor, as 48 in evidence.

15 THE COURT: Mr. Lemke, any objection.

16 MR. LEMKE: No objection. Thank you.

17 THE COURT: Mark it into evidence.

18 THE COURT OFFICER: People's 48 marked in  
19 evidence.

20 MR. HAYDEN: With the Court's permission, may  
21 I read this to the jury.

22 THE COURT: Yes.

23 MR. HAYDEN: Homicide number 52104. Statement  
24 of Mark Orlando. December 10, 2004

25 My name is Mark Orlando. I am thirty-four years

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1           old. I was born on September 26, 1970. I live at 1119  
2 Joselson Avenue, Bayshore, New York, with my wife Diana  
3 and my mother-in-law. My phone number is (631)  
4 242-3051. My cell phone number is (631) 882-3428. I  
5 work at Professional Credit Services in Farmingdale as a  
6 collections agent.

7           I have been told by Detective Cereghino that I have  
8 the right to remain silent and that any statements I  
9 make may be used against me in court. I have been told  
10 that I have the right to talk with a lawyer before  
11 answering any questions, or to have a lawyer present at  
12 any time. Further, I have been advised if I cannot  
13 afford to hire a lawyer, one will be furnished me, and I  
14 have the right to keep silent until I have had the  
15 chance to talk with a lawyer.

16          I understand my rights and make the following  
17 statements freely and voluntarily. I am willing to give  
18 this statement without talking with a lawyer or having  
19 one presents.

20          About six weeks ago a friend of mine told me that he  
21 knew a guy that I can place bets with. I wanted to bet  
22 on pro football, college football and pro basketball. My  
23 friend called the guy and a couple of days later he  
24 introduced me to him. My friend's name is Tom Flores.  
25 He introduced me to Bobby Calabrese. I started betting

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1           a couple of hundred dollars a game. I won every week.  
2           I started betting about fifty bets a week. My line  
3           started at \$1,000 a week.

4           That was the most I was allowed to lose. After two  
5           weeks the line went up to \$3,000. The following week it  
6           went up to \$5,000. The last week and two days I had no  
7           limit. Over the first four weeks I won approximately  
8           \$28,000. First couple of weeks when I won, Bobby would  
9           meet me at my job to pay me. Usually he would come to  
10          my job on Thursdays, but sometimes he couldn't make it,  
11          and Bobby and I would meet on Fridays or it would roll  
12          over to the next week.

13          Bobby gave me a code and a password and phone number  
14          to call to make the bets. Another guy I work with,  
15          Herva Jeannot also wanted to make some bets. I called  
16          and spoke to Bobby about it. He gave me another code  
17          and password Herva, and I gave it to him. Herva never  
18          met Bobby. When Herva lost over the last two weeks, it  
19          was my responsibility to meet Bobby. Herva owed Bobby  
20          about \$1,000 and I was supposed to meet with Bobby on  
21          Thursday, December 3, 2004. I owed Bobby \$8,700 for  
22          bets placed between November 22nd and November 28th.  
23          That money was due December second.

24          I placed more bets on November 29th and 30th and  
25          ended up owing \$9,100. That money wasn't due until

Cerighino - People - Direct

1 December ninth because I had won about \$8,000 earlier.  
2 I owed a total of about \$17,000. Bobby owed me that  
3 \$800 as part of the money I had won earlier. Because I  
4 owed \$17,000, I called Bobby on November 30th and left a  
5 message with him to shut my line down permanently. It  
6 was about eleven p.m. on the 30th. I spoke with Bobby  
7 the next day and confirmed that my line was shut down.  
8 On Thursday, I spoke with Bobby and made plans to meet  
9 with him on Friday to pay him my \$17,000 which would  
10 have covered the money I owed him, I owed from last  
11 week, the \$800 Herva owed, and 95 percent of the money I  
12 owed from November 29th and 30th.

13 I had to go to Wantagh Suzuki dealership on Friday  
14 on Sunrise Highway and Wantagh Avenue. So, I told Bobby  
15 I would meet him at Island Park. On Friday, I went to  
16 work at eight a.m. I had the \$17,000 in two bundles  
17 with rubber bands. I locked the money in the glove  
18 compartment of my wife's 2004 Suzuki Verona. I took my  
19 wife's car because I knew I was going to Island Park and  
20 I have no license. I got out of work about five p.m.,  
21 Herva and I went to Target to buy a sweatshirt because  
22 we were going to a gym to work out. I had my work out  
23 clothes so I waited outside while Herva went into  
24 Targets. I was driving the Suzuki when he got his sweat  
25 shirt at the Target on 110.

Cerighino - People - Direct

1           I drove us to the gym, L.A. Fitness, on Route 110,  
2 Farmingdale. We did a long workout and left the gym at  
3 7:15 to 7:30. Herva knew I had to meet Bobby so he came  
4 along for the ride. I spent more time at the gym than I  
5 thought so I was running late. I had called Ralph at  
6 Wantagh Suzuki earlier in the day to let him know that I  
7 would be coming by that night to pick up a check. After  
8 leaving the gym, Herva and I went down 110 to the  
9 Southern State to the Wantagh Parkway, around the needle  
10 to the Loop to Lido Boulevard to Long Beach.

11           At about 8:20, I pulled onto Industrial Boulevard.  
12 I knew the spot because it was a busy spot, and it was  
13 on the corner. My father had worked on Industrial  
14 twenty years ago. The restaurant that I had remembered  
15 was closed. My wife used to live in Island Park so I  
16 knew the area when I pulled down Industrial Boulevard.

17           There was one body shop that was open. I saw one  
18 guy pulling a truck into the shop. It was behind the  
19 Hess gas station. I also saw a black man sitting in a  
20 two door gray car facing Austin Boulevard on the side  
21 road by the public storage, on the side of the  
22 restaurant. I didn't like the spot because of the guy  
23 sitting in the car so I drove over to the street behind  
24 the 7-Eleven and the tire store, because I knew it would  
25 be discreet. I called him when I got to that road and

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1 told him where I was. I don't remember if I told him  
2 that Herva was with me. I pulled up by the 7-Eleven to  
3 look around to make sure that it was safe and nobody was  
4 around. I didn't want my back to 7-Eleven so I turned  
5 around and looked at a Cadillac parked on the street. I  
6 made sure nobody was in the Cady. I parked in front of  
7 the Cady and waited for Bobby. I was in the driver's  
8 seat and Herva was in the passenger's seat.

9 About two minutes before Bobby showed up, Herva  
10 excused himself. He said he had to take a piss. He  
11 went towards the back of my car, on the passenger side,  
12 I didn't pay attention to him. About a couple of  
13 minutes later, no more than five, Bobby showed up. He  
14 parked about twenty feet in front of my car. I got out  
15 of the my car. Bobby got out of his car, a Lexus. As I  
16 walked up to Bobby, I didn't know where Herva was.  
17 Bobby and I met between the two cars. We hugged each  
18 other. I handed him the two bundles of cash with my  
19 right hand. He took it with his right hand. We were  
20 chest to chest when I handed him the money.

21 Seconds later Bobby looked passed me. He said  
22 something. I have no idea what it was. I was facing  
23 7-Eleven. I turned my head to the right. I saw Herva  
24 about five feet behind me slightly to my right. I saw  
25 something in Herva's right hand. I heard a loud boom.

Cerighino - People - Direct

1 I knew it was a gunshot. I was still standing inches  
2 from Bobby. I looked back towards Bobby. He was still  
3 facing me and he was collapsing face forward toward the  
4 ground. My left arm caught part of him as he fell to  
5 the ground. Bobby was wearing a sweat shirt and jeans.  
6 He wasn't wearing anything on his head. I knew that  
7 Herva had shot Bobby and Bobby was barely hurt. Herva  
8 then stood over Bobby and shot Bobby two more times.  
9 Herva was leaning over Bobby's head when he shot him the  
10 second and third time.

11 Herva went over to Bobby's car and closed the  
12 driver's door. I went back to my car and got in. Herva  
13 came back and got in the passenger's side. He still had  
14 the gun in his right hand. He put the gun on the floor  
15 by his feet. I looked over at Bobby and I could see his  
16 feet still moving. I said to Herva, you fucken shot  
17 Bobby, he's still alive. Herva said, let's go.

18 I pulled out left around Bobby. Herva said stop.  
19 When Herva opened his door, I could see Bobby's body.  
20 Herva got out. He pointed the gun at Bobby again and I  
21 heard click, click, click, but no gunshots. Herva got  
22 back in the car. I pulled in the driveway of a tire  
23 store. At this time, I looked over at Herva and I saw  
24 that he had the two bundles of cash that H had given to  
25 Bobby. I made a right turn and went passed Peter's Clam

Cerighino - People - Direct

1 Bar. When we got to the traffic light, Herva and I were  
2 arguing.

3 I made a U-turn at the dump to go back to the  
4 scene. I made a left turn at Ruby Tuesdays. I came up  
5 a back road and stopped at the light by 7-Eleven. I was  
6 facing Austin Boulevard. I stopped there because I knew  
7 7-Eleven had cameras, because I wanted the cameras to  
8 catch me and Herva in the car together. While I was  
9 stopped at the light I saw people with Bobby. I made  
10 the left turn, I wanted as many people as possible to  
11 see me with Herva I made the left turn, and drove  
12 towards Long Beach.

13 While I was driving, I saw a police car with its  
14 lights on come the other way. I kept driving. I made  
15 the left turn at Pier I Imports. I stopped at every red  
16 light because I know that the red lights take pictures  
17 of your car. I wanted people to know that Herva was in  
18 the car with me. I get on the Loop Parkway. At the  
19 second bridge Herva put his window down and threw the  
20 bullets from the gun out the window. I head towards the  
21 needle at the beach. I kept on the Wantagh Parkway. I  
22 started calling people like the Suzuki dealership and  
23 Vivian. I wanted as many people as possible to see  
24 Herva with me.

25 When I called the Suzuki dealership, I asked for

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1           Ralph. I was told he wasn't in. I asked for my check.  
2           They said they didn't see it. I told them I was on my  
3           way. While heading up the Wantagh Parkway, Herva told  
4           me to stop at the bridge that is being repaired. I  
5           stopped the car in the right, almost at the top of the  
6           bridge. Herva got out and threw the gun toward the  
7           water. The gun had a long barrel. Herva got back in  
8           the car and said let's go. I also called Tom Flores,  
9           my wife and Vivian. I didn't tell them what happened.  
10          By the time we got to Suzuki they were closed. It was  
11          about nine or 9:01 p.m. The lights were on but the  
12          doors were locked. I needed that check for \$1,600 to  
13          put in the bank for my wife. A couple of days later I  
14          went back and got the check.

15          I then drove to Citibank to withdraw \$300 and to get  
16          my picture taken. I went to the drive-up. It's on  
17          Sunrise Highway. There was a girl standing there at the  
18          drive-up. When she finished and walked away, I pulled  
19          up and got out of the car.

20          I popped the trunk and got my wallet from my gym  
21          bag. I know the camera takes a picture of my car when I  
22          pull up, so I knew there would be a clear picture of  
23          Herva plus what he is wearing. I make the withdrawal  
24          and get back in the car with Herva. I drive east on  
25          Sunrise Highway.

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I called Vivian to let her know I am on my way. I told her Herva was with me. I was supposed to go to Vivian's house in Plainview to see her new pool. She wanted to ask me about fences. When we got there, Herva didn't want to go in the house. I went in without him. I was there about thirty minutes. I looked at the pool. We talked about the fence. Herva eventually comes into the house. I talked to Vivian and her husband. Vivian vacuumed my feet because I was getting dirt in the house.

Herva and I left and went to my house. I didn't drop him off at his house because I wanted my mother-in-law to see him. I told him to come to my house because I was going to give him four porno videos. After I gave him the videos I drove him home. While I was driving, while I was driving him, Herva threatened my wife. He said that this wasn't the first person he had killed and it won't be the last. If you open your mouth, that includes your wife. After I drove him home, I went home.

The next day Tom Flores called me and told me that Bobby was dead. I told him that I saw Bobby the night before. I was with Herva, and I wanted to reach out to Bobby Calabrese's family, to let them know that I saw Bobby last night. I told him that I met Bobby on

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1           Industrial Boulevard and paid him the money. After I  
2         spoke to him I called Herva and told him that Bobby was  
3         dead. We argued about this. I didn't ask him about the  
4         money. I told Herva that I told to Tom that we had met  
5         with Bobby, we paid him, and he was okay when we leave.

6           I dictated this statement to Detective Cereghino at  
7         the homicide squad and he has written it for me. I have  
8         read it and it is the truth. I would like to add that  
9         when Herva and I were on the Seaford/Oyster Bay last  
10       Friday night on the way to Vivian's we got off at Exit  
11       9.

12       There's a school there with a dumpster. Herva told  
13       me to pull in so he could throw away his clothes. He  
14       had changed his clothes after the shooting and he wanted  
15       to throw away the clothing he had been wearing. Herva  
16       wanted me to change my clothes but I refused because  
17       there was no reason for me to change my clothes.

18       Q. The defendant's statement reads, we were chest to  
19       chest when I handed him the money. Seconds later Bobby  
20       looked passed me. He said something. I have no idea what it  
21       was. I was facing 7-Eleven.

22       Did the defendant say he and Bobby Calabrese were face to  
23       face when the first shot was fired?

24       A. Yes, sir.

25       Q. The defendant's statement reads, I turned to my

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1 right, I saw Herva about five feet behind me, slightly to my  
2 right. I saw something in Herva's right hand. I heard a  
3 loud boom. I knew it was a gunshot.

4 Did the defendant say that Herva Jeannot was five feet  
5 behind the defendant when Herva fired the first shot?

6 A. Yes, sir.

7 Q. Slightly to the defendant's right?

8 A. Yes, sir.

9 Q. Did the defendant say Herva was facing Bobby as  
10 Herva approached from behind the defendant?

11 A. Repeat that, please.

12 Q. Did the defendant say Herva was facing Bobby as  
13 Herva approached from behind the defendant?

14 A. He never said he was approaching. He stated that  
15 he was behind Mr. Orlando about five feet, but he was facing  
16 the victim, with the defendant facing the victim.

17 Q. Herva was facing the victim when Herva fired the  
18 first shot?

19 A. Yes, sir.

20 Q. Did the defendant draw a diagram while you were  
21 reducing what he was saying to writing?

22 A. Yes, sir.

23 Q. Describe for the jury how that happened?

24 A. As he started explaining about the Cadillac and his  
25 car and Bobby's car and where everyone was standing, at that

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1 time I gave him a blank piece of paper and a pen and I asked  
2 him to draw exactly the way it was and where the Cadillac  
3 was, put where his car was, also where Bobby's car pulled up,  
4 and he put exactly where each person was standing. With  
5 Bobby facing south, the defendant right with him because he  
6 demonstrated how he gave him the money while I was taking the  
7 statement. And he stated where Herva was when he turned over  
8 his shoulder and looked at him.

9 MR. HAYDEN: May I please have 52 for  
10 identification shown to the witness, Your Honor.

11 THE COURT OFFICER: Witness has 52 for ID.

12 Q. Do you recognize that?

13 A. Yes, sir.

14 Q. What is it?

15 A. This is the drawing made by Mr. Orlando, that was  
16 done while I was taking the statement.

17 MR. HAYDEN: We offer that as 52 in evidence.

18 MR. LEMKE: No objection.

19 THE COURT: Mark it in evidence.

20 THE COURT OFFICER: People's 52 in evidence.

21 Do you want it shown back to the witness?

22 MR. HAYDEN: No, thank you.

23 Q. Did the defendant have anything to eat or drink?

24 A. About eleven o'clock he was offered a donut which  
25 he took and then towards the end of the statement, he was

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1 offered lunch. I believe it was a turkey and cheese on white  
2 which someone was going out to get. They brought it back  
3 just prior to the end of the statement. It was sitting on  
4 the desk while the defendant and I were signing each page.

5 Q. Did the defendant use the men's room whenever he  
6 asked?

7 A. Yes.

8 Q. Describe the defendant's physical condition while  
9 you were with him?

10 A. I would say he was calm but anxious.

11 Q. Did you recover evidence involving Mark Orlando  
12 during the investigation of Bobby Calabrese?

13 A. Yes, I did.

14 Q. When did you recover evidence involving Mark  
15 Orlando?

16 A. It was a little after five p.m. on December 10,  
17 2004. I responded out to the place of employment where  
18 Mr. Orlando worked. I spoke to the owner. I advised him Mr.  
19 Orlando had already given a consent search to search his work  
20 area. I asked Mr. Forster if he would give a consent search  
21 in an effort to recover evidence. Mr. Forster agreed to do  
22 so, but just asked that it be limited to the exact work areas  
23 of Mr. Orlando and Mr. Jeannot.

24 Q. Describe the evidence you recovered?

25 A. The new work area where Mr. Orlando did his

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1 business, I recovered his wallet, an ATM receipt dated  
2 December third, timed 9:12 p.m. I also recovered a couple of  
3 notebooks.

4 Q. Describe the circumstances under which you  
5 recovered those items?

6 A. I was directed that the ATM receipt would be there,  
7 and that is why I responded there to recover it.

8 MR. HAYDEN: May I please have 43 for  
9 identification shown to the witness, Your Honor.

10 THE COURT: Yes.

11 THE COURT OFFICER: The witness has 43 for ID.

12 Q. Do you recognize that?

13 A. Yes, sir, I do.

14 Q. What is it?

15 A. This is the CitiBank ATM withdrawal slip for the  
16 withdrawal of \$300 on December 3, 2004 at 2112 hours, which  
17 would be 9:12 p.m.

18 MR. HAYDEN: We offer that in evidence.

19 MR. LEMKE: No objection, Your Honor.

20 THE COURT: Mark it in evidence.

21 THE COURT OFFICER: People's exhibit 43  
22 marked in evidence.

23 Do you want it shown back to the witness?

24 MR. HAYDEN: No, thank you.

25 May I please have 50 and 51 for identification shown

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1 to the witness?

2 THE COURT: Yes.

3 THE COURT OFFICER: The witness has 50 and 51  
4 for identification.

5 Q. Do you recognize those documents?

6 A. Yes, sir, I do.

7 Q. Would you take a look at the document that has been  
8 marked 50 for identification.

9 A. Yes, sir.

10 Q. You got that one?

11 A. Yes.

12 Q. What is that one?

13 A. This is the consent search form that was signed by  
14 the defendant.

15 Q. What is 51?

16 A. This is the consent search form that I asked Mr.  
17 Forster, the owner of Professional Credit Services, to sign  
18 at approximately five p.m., on December tenth.

19 MR. HAYDEN: Your Honor, the People offer both  
20 50 and 51 in evidence.

21 MR. LEMKE: No objection.

22 THE COURT: Mark them in evidence.

23 THE COURT OFFICER: People's exhibits 50 and  
24 51 marked in evidence.

25 Do you want them shown to the witness?

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1 MR. HAYDEN: You can just leave them.

2 Nothing further at this time, Your Honor.

3 THE COURT: Thank you.

4 MR. LEMKE: Thank you.

5 CROSS EXAMINATION

6 BY MR. LEMKE:

7 Q. Good afternoon, detective.

8 A. Good afternoon, sir.

9 Q. Detective, just a few questions.

10 On December 10, '04, that is when you went in at about  
11 10:30, isn't that correct, to speak with Mr. Orlando?

12 A. It was ten a.m.

13 Q. In the morning. It was ten a.m.?

14 A. Yes, sir.

15 Q. In fact, there's a log that is usually kept, isn't  
16 that correct, or notations that were made when anyone went in  
17 to speak to Mr. Orlando; is that correct?

18 A. I am unaware of that, sir.

19 MR. LEMKE: If I can have this marked for  
20 identification purposes, please.

21 THE COURT: Defendant's A for ID.

22 THE COURT OFFICER: So marked.

23 Q. Detective, just take a look at that. I don't know  
24 if that is familiar to you.

25 Is that your writing on that at all?

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1 A. No, it's not.

2 Q. Okay. That may have been recorded by another  
3 detective?

4 A. Excuse me.

5 Q. That may have been recorded, if you know, by  
6 another detective?

7 A. Yes, sir.

8 MR. LEMKE: Okay. Could I have that back,  
9 please.

10 Q. Now, at, I guess, you're saying ten a.m., when you  
11 first met Mr. Orlando?

12 A. Yes, sir.

13 Q. But you had met him, I believe, the previous  
14 evening; isn't that correct?

15 A. When he initially came into the office, yes, sir.

16 Q. In fact, when he was brought in, I think you had  
17 patted him down to make sure he didn't have drugs or weapons  
18 on him?

19 A. Take the handcuffs off.

20 Q. You did that?

21 A. Yes.

22 Q. There was no weapons or drugs found on Mr. Orlando,  
23 correct?

24 A. No, sir.

25 Q. Mr. Orlando was fully cooperative with you when you

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1 searched him at that time, correct?

2 A. Yes, sir.

3 Q. Now, in the morning when you go in to speak with  
4 Mr. Orlando, you had I believe gone home to sleep for about  
5 three hours perhaps, about, correct?

6 A. Yes, sir.

7 Q. You came back to work that morning, spoke to one of  
8 the other detectives, perhaps, who asked you to go and speak  
9 to Mr. Orlando, correct?

10 A. I wasn't asked to speak to Mr. Orlando. I was  
11 asked to take a statement from him as to his final version of  
12 the event of December third.

13 Q. Okay. You went in and he fully cooperated with  
14 you, correct?

15 A. He cooperated as to his version of the events, yes,  
16 sir.

17 Q. You began to make notations, or I should say reduce  
18 it to a written form; isn't that correct?

19 A. I reduced it to a writing. There were no notes.

20 Q. So, in this case, I think you said there were no  
21 notes taken, you just reduced it as it was being told to you,  
22 correct?

23 A. Yes.

24 Q. As it's being written, you're talking to  
25 Mr. Orlando, and that is reduced into what is now in

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1 evidence, correct?

2 A. Yes.

3 Q. And part of that conversation that you had with  
4 Mr. Orlando, not once did he ever tell you that he knew that  
5 Herva Jeannot was going to attempt, in fact, go to rob  
6 Mr. Calabrese, correct?

7 A. No, sir.

8 Q. Not once did Mr. Orlando tell you that he knew  
9 Herva Jeannot was planning to either shoot or kill  
10 Mr. Calabrese; isn't that correct?

11 A. Yes, sir, he did not.

12 Q. In fact, Mr. Orlando told you he was there to pay  
13 off part, in fact, most of the gambling debts he owed  
14 Mr. Calabrese, correct?

15 A. Yes.

16 Q. He had told you throughout the statement that you  
17 reduced that he wanted to be seen by as many people as  
18 possible; isn't that correct?

19 A. Yes, sir.

20 Q. So that, if anything was to ever happen to him,  
21 that your investigation may very well show Mr. Orlando was  
22 with Herva Jeannot, correct?

23 A. Never reduced it to stating if anything happen to  
24 him.

25 Q. Well, in the statement, it's recorded that Herva

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1       would kill his wife or him if he ever said anything,  
2       correct?

3           A. He stated that at the end of the statement, and  
4       upon reviewing it, he took himself out of it. He said he  
5       threatened to harm him or his wife. At that time he asked  
6       that he be removed and that the threat was only against his  
7       wife.

8           Q. That he'd only kill his wife; isn't that correct?

9           A. Yes.

10          Q. True? And that, were you present as well when Mr.  
11       Orlando indicated that Mr. Jeannot had killed before and this  
12       may not be the last person he killed?

13          A. He stated that Mr. Jeannot had stated that, but he  
14       provided no evidence to back it.

15          Q. You mean he didn't provide you with some other  
16       person he had killed, correct?

17          A. It was merely something that Mr. Jeannot had stated  
18       to him.

19          Q. Right. In fact, that was significant enough to  
20       write down in the statement, correct?

21          A. Your client thought so, yes, sir.

22          Q. He was cooperative in speaking to you at this hour,  
23       wasn't he?

24          A. Yes, sir. He gave me his version and I put it on  
25       paper.

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1 Q. Just about everything he told you you write down;  
2 isn't that correct?

3 A. Yes.

4 Q. When it was done and it was recorded, that had  
5 ended at about maybe eleven o'clock?

6 A. It was noon, maybe a little bit after. Took him  
7 approximately two hours.

8 Q. And the end of that, you didn't ask him if he  
9 wanted to speak to the District Attorney's Office or be  
10 videotaped, did you?

11 A. No, sir.

12 MR. LEMKE: I have nothing further. Thank  
13 you.

14 THE COURT: Mr. Hayden.

15 REDIRECT EXAMINATION

16 BY MR. HAYDEN:

17 Q. You just testified during cross examination about  
18 threats.

19 What exactly was that threat?

20 A. The threat that he would kill the defendant's  
21 wife.

22 Q. When did he tell you that threat took place?

23 A. It was an eight page statement. He gave it to me  
24 on the seventh page as they were driving to Vivian's house.

25 Q. Did he tell you that Herva Jeannot had made any

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1      threat to him after Herva Jeannot fired that first shot and  
2      Bobby Calabrese collapsed to the surface of the road?

3      A.    No, sir.

4      Q.    Did he tell you Herva Jeannot made any kind of a  
5      threat after Herva Jeannot stood over Bobby's body, leaned  
6      down and fired two more bullets into Bobby's head?

7      A.    No.

8      Q.    Did he tell you that Herva Jeannot made any kind of  
9      a threat when the defendant got into the Suzuki Verona and  
10     Herva got in along side of him?

11     A.    No.

12     Q.    Did he tell you that Herva Jeannot had made any  
13     kind of threat when the defendant drove Herva Jeannot away  
14     from the scene of this execution murder?

15     A.    No, sir.

16     Q.    Did the defendant tell you Herva Jeannot made any  
17     kind of threat as the defendant was driving out onto the  
18     Wantagh Parkway?

19     A.    No, sir.

20     Q.    Did the defendant tell you that Herva Jeannot made  
21     any kind of a threat back there at the scene when the  
22     defendant stopped so Herva Jeannot could get out and try to  
23     put a couple more shots into Bobby Calabrese?

24     A.    No, he did not.

25     Q.    Did he say anything about a threat when the

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1 defendant stopped along the Sloop Channel Bridge so Herva  
2 Jeannot could get out and then waited for Herva Jeannot when  
3 he went over to the edge of the bridge and tossed the weapon  
4 down into the water below?

5 A. No, sir.

6 Q. Did he say anything about Herva Jeannot making a  
7 threat as the defendant drove Herva Jeannot into Wantagh to  
8 Wantagh Suzuki?

9 A. No.

10 Q. Did he say anything about Herva Jeannot making a  
11 throat at the defendant when he drove Herva Jeannot to the  
12 Wantagh CitiBank branch and the defendants got out and made a  
13 \$300 withdrawal?

14 A. No.

15 Q. Did he say anything about Herva Jeannot making any  
16 threat as the defendant continued to make cell phone calls as  
17 the defendant was driving along into Wantagh and then out to  
18 Plainview?

19 A. No, sir.

20 Q. Did he say anything about Herva Jeannot making a  
21 threat as the defendant drove Herva Jeannot out to Vivian  
22 Borushik's house?

23 A. No, sir.

24 Q. Did the defendant say anything about Herva Jeannot  
25 making any threats when the defendant drove Herva Jeannot to

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1        his own home?

2            A. At that time he did, yes, sir.

3            Q. I mean to the defendant's own home?

4            A. Not to his own home.

5            Q. The defendant told you he watched Herva Jeannot  
6 execute Bobby Calabrese with three shots to the head, and  
7 then he told you he drove Herva Jeannot to his own home?

8            A. Yes, sir.

9            Q. Where his family was?

10          A. Yes, sir.

11          Q. This is the family he was afraid Herva was going to  
12 hurt?

13          A. Yes, sir.

14          Q. So, when did the threat finally appear on the  
15 scene? When did that happen?

16          A. It was near the end of the statement while he was  
17 being driven home.

18          Q. The very ends?

19          A. Yes, sir.

20          Q. That is when he told you?

21          A. Yes, sir.

22          Q. And that was where the threat was in the sequence  
23 of events?

24          A. Yes, sir.

25            MR. HAYDEN: Nothing further, Your Honor.

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1 RECROSS EXAMINATION

2 BY MR. LEMKE:

3 Q. Did you ask my client, Mr. Orlando, when was the  
4 first time Mr. Jeannot threatened to kill his wife or him?

5 A. I never asked him that specifically. I went  
6 through each version of events as he gave them to me, and at  
7 this point, as he is being, he is driving him home, that is  
8 when he stated that while they're in the car, after he got  
9 rid of the gun, that is when he threatened him.

10 Q. There is no mistake my client told you that Herva  
11 would kill him or his wife if he said anything; isn't that  
12 correct?

13 A. Again, yes, sir, but upon reviewing the statement,  
14 he took the threat away from him. He said he wasn't  
15 threatened. That was --

16 Q. Listen to the question.

17 A. Sure.

18 Q. You're talking to my client.

19 A. Yes, sir.

20 Q. For about an hour. That is all it is. Isn't that  
21 correct?

22 A. About two hours.

23 Q. Okay. Two hours. You first start talking to him,  
24 it's reduced to writing, correct?

25 A. No. The statement took about two hours. We

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1 started almost immediately.

2 Q. Mr. Orlando doesn't tell you that Herva threatened  
3 him a week later or three days after Herva Jeannot killed  
4 Mr. Calabrese, does he?

5 A. No, sir.

6 Q. No. Mr. Orlando doesn't tell you that Herva  
7 Jeannot called him up on Saturday, the next day, and said,  
8 you know what, I'm thinking about things, Mark, if you say a  
9 word I'm going to kill your wife, or I'm going to kill you?

10 Mr. Orlando doesn't tell you that, does he?

11 A. No.

12 Q. Mr. Orlando tells you that while he is talking to  
13 you and within a very short period of time after  
14 Mr. Calabrese was killed in cold blood, there is no question  
15 about that, that Mr. Orlando is threatened by Herva Jeannot;  
16 isn't that correct?

17 A. That he was threatened?

18 Q. Yes?

19 A. Again, yes, he states he was threatened, and then  
20 he took the threat off himself --

21 Q. Finish what you said, detective.

22 A. As I said, yes, he did state that Herva Jeannot  
23 threatened him and his wife. Upon revising his statement,  
24 before he signed it, he wanted the threat to be taken off him  
25 to just read threatened my wife. It was, it was me and my

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1 wife just became threatened my wife.

2 Q. So, he threatened to kill his wife?

3 A. That is what your clients told me.

4 Q. Right. In fact, you wrote the statement down,  
5 correct?

6 A. Yes.

7 Q. And, then, at this point my client then signed it,  
8 correct?

9 A. Upon the completion of the statement, his reviewing  
10 it, making certain corrections, yes.

11 Q. There is no mistake that in the statement that you  
12 wrote of my client, he told you, whether it's page one or  
13 five or eight, that Herva Jeannot threatened to kill his  
14 wife; isn't that correct?

15 If he said anything?

16 A. Yes, sir.

17 Q. Thank you.

18 THE COURT: Anything further, Mr. Hayden.

19 MR. HAYDEN: No, Your Honor.

20 THE COURT: Again, ladies and gentlemen in the  
21 gallery, remain seated.

22 Detective, you can step down. You're excused.

23 We are going to break for the day and resume again  
24 tomorrow morning 9:15. As I told you, we're moving very  
25 quickly and I am confident that this case will be given

## Proceedings

1 to you, much sooner than we had told you the parameters  
2 would be.

3 I am going to give you the same admonitions..

4 Please, you must adhere to them. You must not converse  
5 among yourselves or with anyone else upon any subject  
6 connected with the trial. You must not read or listen  
7 to any accounts or discussions of the case in the event  
8 it is reported by newspapers or other media. You must  
9 not visit or view the premises or place where the see  
10 offense charged was allegedly committed, or any other  
11 premises or place involved in the case. Prior to your  
12 discharge, you must not request, accept, agree to  
13 accept, or discuss with any person the receiving or  
14 accepting of any payment or benefit in consideration for  
15 supplying any information concerning the trial.

16 You must promptly report to the Court any incident  
17 within your knowledge involving an attempt by any person  
18 to improperly influence any member of the jury. You  
19 cannot access the Internet or Worldwide Web by any means  
20 available to you for the purpose of learning about this  
21 case or to learn about the law and the legal issues  
22 concerning this case.

23 Have a wonderful evening. See you tomorrow at 9:15.

24 THE COURT OFFICER: Jurors taking notes, leave  
25 your note pats on the chair and follow me out.

Proceedings

3 THE COURT: Be in this courtroom, possibly be  
4 here before ten. I will try to start at ten o'clock.

5 Court's in recess.

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